

This letter concerns isolated or occasional sales. See also 86 Ill. Adm. Code 130.110 (This is a GIL.)

September 9, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 31, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We have a client who has their headquarters in New Mexico and also does business in Illinois. They are anticipating the complete sale of this business; including inventory, raw materials, equipment, buildings and land.

Our question is: Will there be any type of sales or other tax on any portion of this sale?

Some states have tax on sales of various types of property, and we were unable to determine from the instructions for sales tax if this was true in your state. Could you please send us any regulations that would cover this situation.

Thank you for your time and consideration of this matter.

Your letter has been forwarded to me for a response regarding sales tax. The Retailers' Occupation Tax Act imposes a tax upon persons who are engaged in the occupation of selling tangible personal property at retail. See 35 ILCS 120/1 et seq. Since the Act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability. Please refer to the Department's regulation regarding Occasional Sales at 86 Ill. Adm. Code 130.110. See also Section 1 of the Retailers' Occupation Tax Act, which states, in part, as follows:

“The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail...does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act....

As a general proposition, the occasional sale exemption is available when a person purchases an item and then, after using the item, disposes of it by selling it. However, this means that for a sale to qualify as occasional, an entity must not be in the business of selling the same type of tangible personal property. For example, if a seller of computers decides to sell computers that it has used internally, such sales would not qualify as occasional sales because the entity is in the business of selling computers and servers. This is true even if the equipment does not have the same memory or storage capacity or does not perform exactly identical functions as the items normally sold.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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